

(PROPOSED 2011 DRAFT AMENDMENTS)

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**FRENCHMAN BAY
REGIONAL SHELLFISH CONSERVATION
ORDINANCE**

**For the Communities of
Ellsworth, Franklin, Hancock, Lamoine, Sorrento, Sullivan and Trenton**

Mission Statement: These communities shall act collaboratively as stewards to preserve, protect, manage and enhance the shellfish resources and ecological well being of the Greater Frenchman Bay Region and to insure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

**Management Partnership Team
Frenchman Bay Regional Shellfish Conservation Committee
&
Frenchman Bay Regional Shellfish Municipal Joint Board**

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Communities of Ellsworth, Franklin, Hancock, Lamoine, Sorrento, Sullivan and Trenton

Mission Statement: These communities shall act collaboratively as stewards to preserve, protect, manage and enhance the shellfish resources and ecological well being of the Greater Frenchman Bay Region and to insure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

1. **Authority:** This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.
2. **Purpose:** To establish a shellfish conservation program for the participating communities, which shall insure the protection and optimum utilization of shellfish resources within its limits. These goals shall be achieved by means, which may include, but not be limited to:
 - A. Licensing.
 - B. Limiting the number of shellfish harvesters.
 - C. Restricting the time and area where digging is permitted.
 - D. Limiting the minimum size of clams taken.
 - E. Limiting the amount of shellfish taken daily by a harvester.

3. **Administration**

3.1 **The Frenchman Bay Regional Shellfish Conservation Committee:** The Regional Shellfish Management Program for the participating communities shall be administered jointly by the Frenchman Bay Regional Shellfish Municipal Joint Board (Municipal Joint Board) and the Frenchman Bay Regional Shellfish Conservation Committee (Conservation Committee). The Conservation Committee shall consist of one member and one alternate of each participating town. Committee Members shall be commercial harvesters licensed under this Ordinance, if they are available and willing to serve, and shall be appointed by the municipal officers of the participating communities and in accordance with the procedures outlined in this document for terms of up to three (3) years, ~~except the initial appointment which shall be for 1, 2 or 3 years~~. A quorum shall consist of a majority of the members.

A. **Selection of Regional Shellfish Conservation Committee Members:** Selectmen/Council members of each of the participating communities shall appoint, and replace as necessary, Regional Shellfish Conservation Committee members according to their own policies and procedures.

B. **Regional Shellfish Conservation Committee's Responsibilities shall include:**

- i. Submitting to the Municipal Joint Board by ~~January-February 1st~~ proposals for the expenditure of funds for the purpose of shellfish management.
- ii. Keeping this Ordinance under review and making recommendations for its amendments.
- iii. Recommending management actions to the Municipal Joint Board in conjunction with the Area Biologist of the Department of Marine Resources. Such actions may include, but are not limited to, re-seeding of defined shellfish flats, establishing conservation closures, shoreline cleanup, and limiting and/or expanding harvesting activities.

iv. Recommending to the Municipal Joint Board enforcement actions for the protection of the resource.

v. Submitting an annual report to the participating communities and the Department of Marine Resources covering the aforementioned topics and other Committee activities by ~~January~~ February 12nd.

vi. Assist in identifying possible sources of pollution harmful to the intertidal habitat and the shellfish resources.

vii. By January 2nd of each year submit an Annual Shellfish Management Plan to the Municipal Joint Board for their approval and the approval of the Department of Marine Resources. ~~The plan shall outline in detail the number of licenses to be issued annually, license fees, the amount of shellfish allowed to be harvested per tide, restrictions on the times and days harvesting shall be allowed, and other relevant resource management tools. The plan shall be submitted to the Commissioner of Marine Resources for approval prior to January 2nd of each year.~~

viii. By ~~January 2nd~~ April 1 of each year submit an Annual Shellfish License Allocation Procedure Plan ~~for approval by~~ to the Municipal Joint Board ~~for approval~~. This plan shall outline in detail how licenses are to be allocated on an annual basis and shall be consistent with 12 M.R.S.A Section 6671 (3-A)(C). After receiving approval for license allocations from the Commissioner of Marine Resources, the Regional Shellfish Conservation Committee shall notify the Administrative Community, in writing, the number of shellfish licenses to be issued.

C. Attendance: Regional Shellfish Conservation Committee members shall make every effort to regularly attend Committee meetings. Any Committee member who misses more than two consecutive ~~unexcused absences~~ meetings, ~~shall may~~ lose their seat on the Committee.

D. Convictions: Anyone convicted of violating this ordinance shall be removed from the Shellfish Conservation committee ~~Committee~~.

3.2. FRENCHMAN BAY REGIONAL SHELLFISH MUNICIPAL JOINT BOARD: Each of the participating towns shall appoint one municipal officer (~~Selectmen~~ Selectman/Council member) as a member of a Municipal Joint Board to act as the town's representative for all issues concerning this agreement. Each of the participating towns may also appoint one individual as an alternate member of the Municipal Joint Board to represent the respective municipal officer during an absence at a Municipal Joint Board meeting. The alternate must be a resident of the participating town, does not need to be a municipal officer (~~Selectmen~~ Selectman) of the participating town, and ~~must may~~ not have held a commercial shellfish license during the last three (3) years previous to the appointment. The person so appointed shall serve at the pleasure of the body that made the appointment and may be replaced thereby.

A. Meetings: The Chairman of the Municipal Joint Board shall be elected at the first meeting of each calendar year by the members of the Municipal Joint Board. A quorum shall consist of a majority of the members of the Board. Notice of all meetings of the Municipal Joint Board shall be given to each member of the Board and the Chairman of the Regional Shellfish Conservation Committee, shall be published in accordance with each town's policies, and shall be open to the public. Minutes shall be recorded and made available for public review.

B. Powers: The Municipal Joint Board is authorized to approve the number of shellfish licenses to be issued, approve license fees, open and close the flats, set times when digging is allowed, set permitted quantities that may be harvested, and to take such actions as authorized by each

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of the participating community's Board of Selectmen/Council, and subject to the Department of Marine Resources approval as noted in Section 6, based upon the recommendations of the Regional Shellfish Conservation Committee. These actions shall be described in an Annual Shellfish Management Plan submitted by the Regional Shellfish Conservation Committee. Unanimous recommendations of the Regional Shellfish Conservation Committee regarding the management of the shellfish resources (i.e., those issues related to the sustainable harvest of the resource and not related to personnel, fiscal expenditures or legal matters) shall be approved by the Municipal Joint Board unless a unanimous vote of the Municipal Joint Board decides otherwise.

4. **Definitions**

- A. Resident:** The term "resident" refers to a person being a Maine resident who has proof of being domiciled in at least one of the participating communities continuously for a minimum of one year prior to the time his claim of such residence is made and/or whom has paid real estate taxes in at least one of these participating communities continuously for at least five years. In order to determine resident eligibility new residents shall provide two forms of proof of residency from the list below. At least one shall be from Section 3 in chart below. All licensed harvesters will provide proof of residency on an annual basis.

Section 1	Section 2	Section 3
<p>*Copy of deed AND record of most recent mortgage payment</p> <p>*Copy of Lease AND record of most recent legal affidavit from landlord affirming tenancy.</p> <p>*Legal affidavit from landlord affirming tenancy AND record of most recent rent payment.</p>	<p>A utility bill or other work order dated within the past 60 days including:</p> <ul style="list-style-type: none"> *Gas Bill *Oil Bill *Electric Bill *Telephone Bill *Cable or Satellite Bill <p>Dated within the past year:</p> <ul style="list-style-type: none"> *W-2 Form *Excise (vehicle) tax bill *Property tax bill <p>*Dated within the past 60 days:</p> <ul style="list-style-type: none"> *Letter from approved Government agency *Payroll Stub *Bank or credit card statement 	<p><u>*Any valid form of photo ID and proof of residency, that may include:</u></p> <p>*A <u>Valid</u> <u>Maine</u> Drivers <u>License</u> displaying physical <u>Address</u>.</p> <p>*A <u>Valid</u> Maine photo ID <u>card</u> displaying physical <u>address</u>.</p> <p>*Valid Passport displaying physical address</p> <p>*A <u>C</u>urrent vehicle <u>registration</u> displaying that displays a physical address.</p>

- B. Nonresident:** The term "nonresident" means anyone not qualified as a resident under this ordinance.
- C. Shellfish, Clams and Intertidal Shellfish Resources:** When used in the context of this ordinance the words "shellfish", "clams", and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*), quahogs (*Mercenaria mercenaria*), razor clams (*Ensis directus*), hen clams (*Spisula solidissima*), eastern oysters (*Crassostrea virginica*) and European Oysters (*Ostrea edulis*).
- D. Municipality:** Refers to the Communities of Ellsworth, Franklin, Hancock, Lamoine, Sorrento, Sullivan and Trenton, Maine.

- E. **Administrative Municipality:** The community that administers this Ordinance and the directives of the Municipal Joint Board.
- F. **Annual Shellfish License Allocation Procedure Plan:** A plan written by the Regional Shellfish Conservation Committee and submitted to the Municipal Joint Board, by April 1 of each year, for approval. This plan shall outline in detail how licenses are to be allocated on an annual basis and shall establish priority status for the allocation of licenses as referred to in Section 5.3.
- G. **Annual Shellfish Management Plan:** A detailed shellfish resource management plan written on an annual basis by the Frenchman Bay Regional Shellfish Conservation Committee and submitted to, and approved by, the Frenchman Bay Regional Shellfish Municipal Joint Board for submission to, and approval by, the Maine Department of Marine Resources. Said plan shall define actions to be taken regarding the number of licenses to be issued, re-seeding activities, conservation closures, limits on allowable harvest and harvesting days and times, and other measures taken to ensure a sustainable harvest of the resource.
- H. **Conservation Time:** Those measures and activities ~~approved-developed~~ by the Regional Shellfish Conservation Committee, and approved by the Municipal Joint Board, for the purposes of resource enhancement and the support of the Frenchman Bay Regional Shellfish Management Program. Said activities shall be outlined in the Annual Shellfish Management Plan. Conservation time must be completed prior to the ~~issuance-sale~~ of a municipal commercial shellfish license in accordance with the Annual Shellfish License Allocation Procedure Plan and Conservation Regulations.

5. **LICENSING:**

A Frenchman Bay Regional Shellfish License is required to harvest shellfish in the jurisdiction of this Ordinance. It is unlawful for any person to dig or take shellfish from the shores and flats of the participating communities for the purpose of selling the clams without having a current commercial license issued by ~~a participating town~~ the Administrative Municipality as provided by this Ordinance. Additionally, a commercial digger must have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to harvesting clams for commercial purposes. It shall be unlawful for any individual whose State of Maine Commercial Shellfish License, ~~state license~~ or right to harvest, has been suspended by the ~~state~~ State of Maine to harvest or possess shellfish without proof of purchase. Also, if such individual currently holds a municipal license, such license shall be suspended for the same period of time. Restrictions on licenses regarding the harvest of shellfish as defined in this ordinance shall be outlined in the Annual Shellfish Management Plan ~~proposed-developed~~ by the Regional Shellfish Conservation Committee and approved by the Municipal Joint Board.

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~~**Start-Up Licensing and Requirements:** All license sales shall be conducted as described in the Annual Shellfish License Allocation Procedure Plan developed each year by the Frenchman Bay Regional Shellfish Conservation Committee. For the first year of this ordinance only, license sales shall take place and be effective beginning June 21st, 2010. The lottery for non-resident commercial licenses will be held one week after resident commercial licenses go on sale. Conservation requirements shall be waived for the first year purchase only. Licensed harvesters shall be required to participate in conservation work during the 2010 season to be eligible for the 2011 commercial License. At least half the required 12 hours of conservation time shall be completed by 1 December 2010.~~

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5.1 Designation, Scope and Qualifications:

A. Resident Commercial Shellfish License: ~~The-This~~ license is available to residents of a ~~participating~~ municipality ~~and who are also~~ State of Maine Residents ~~and/or~~ real estate tax payers ~~of in~~ at least one of the ~~participating~~ municipalities participating in this ordinance and entitles the holder to dig and take any amount of shellfish from the shores and flats of these ~~participating~~ municipalities ~~and reciprocating municipalities~~.

B. Nonresident Commercial Shellfish License: ~~The-This~~ license is available to nonresidents of ~~the region~~ those municipalities participating in this ordinance and entitles the holder to dig and take any amount of shellfish from the shores and flats of ~~this region~~ the participating municipalities.

C. Resident Junior Commercial Shellfish License: This license is available to residents of the municipality who are ~~16 years or less~~ younger than age 17 at the time of issuance of the license. A resident junior license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial resident license.

D. Nonresident Junior Commercial Shellfish License: This license is available to nonresidents who are ~~16 years or less~~ younger than age 17 at the time of the issuance of the license. A nonresident junior license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial nonresident license.

E. Commercial Quahog License: ~~The-This~~ license is available to residents of a participating municipality or non residents and entitles the holder to dig and take any amount of quahogs from the shores and flats of these municipalities and reciprocating municipalities.

F. Resident Senior Commercial License: This license is available to resident seniors over the age of 65. Fees for this license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial resident license.

G. Non-Resident Senior Commercial License: This license is available to nonresident seniors over the age of 65. Fees for this license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial non-resident license.

H. Residential Family/Individual Recreational Shellfish License: ~~The-This~~ license is available to Residents and Maine resident real estate taxpayers of participating municipalities who do ~~not~~ hold a valid ~~Maine~~ State of Maine Commercial Shellfish License and entitles the family to dig and take no more than one peck of shellfish or 3 bushels of “hen” or “surf” clams in any one day for the use of himself and his family. Residents with an Aquaculture ~~lease~~ Lease permits-Permit shall be exempt and eligible for a recreational license.

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I. Nonresident Family/Individual Recreational Shellfish License: ~~The-This~~ license is available to any person not a resident of ~~this region~~ one of the participating municipalities who does ~~not~~ hold a valid ~~Maine~~ State of Maine Commercial Shellfish License and entitles the family to dig and take not more than one peck of shellfish or 3 bushels of “hen” or “surf” clams in any one day for the use of himself and his family. Non-residents with an Aquaculture Lease Permit shall be exempt and eligible for a recreational license.

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J. License must be signed: The licensee must sign the license to make it valid. License must be in possession when engaged in harvesting. By signing the license the harvester acknowledges that they must submit to inspection by the Municipal Shellfish Warden.

5.2 Fees: A schedule of fees shall be available at the Town Offices of all participating communities. The fees for the licenses shall be determined annually by ~~The Regional~~ Shellfish

Conservation Committee and Municipal Joint Board. Licensees shall submit fees, in full upon issuance of license. Fees received for shellfish ~~licensing~~ licenses shall be used by the Administrative Municipality to support the Frenchman Bay Regional Shellfish ~~Management~~ Conservation Ordinance. Sale of recreational licenses shall be the responsibility of each participating town. Any and all fees and license sales information for recreational licenses shall be collected by the participating municipalities and sent to the Administrative Municipality quarterly, except for a \$1.00 agent fee per license that will be retained by the issuing municipality.

- 5.3 Application Procedure:** Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the Administrative Municipality. Notice of available commercial licenses shall be published in a trade or industry publication, or in a newspaper, or newspapers, or combination of newspapers with general circulation which the Municipal Joint Board consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices of the participating communities until the period expires. Applications for commercial licenses must be received at the Town Office of the Administrative Municipality as required by the Annual Shellfish License Allocation Procedure Plan. No ~~Shellfish-shellfish~~ licenses may be reserved and licenses cannot be transferred.

A. Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and any additional information the municipality may require, including photos.

B. Misrepresentation: Any person who intentionally gives false information on a license application shall cause the application to be removed from consideration, if a license is issued as a result of the false information, said license to become invalid and void.

C. Address change: A person holding a commercial shellfish license under this ordinance shall notify the town clerk of the Administrative Town within ninety (90) days of address change outside of the participating municipalities. Failure to do so will be considered and treated as misrepresentation.

- 5.4. License Allocation Procedures:** License sales procedures shall be determined by the Shellfish ~~Management-Conservation~~ Committee, approved by the Municipal Joint Board, and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the licenses going on sale. Notice of the number of licenses to be issued and the procedure for application shall be defined by ~~an~~ the Annual Shellfish License Allocation Procedure Plan.

A. The Town Clerk of the Administrative Municipality shall issue licenses to those residents and non residents who have met the requirements of obtaining a commercial license. The Town Clerk shall issue licenses and hold a lottery for nonresident commercial licenses by procedure described in the Annual Shellfish License Allocation Procedure Plan, allocated starting April 1st or the next business day. A lottery for non resident commercial licenses will be held June 15th or the next business day.

B. Required ~~Conservation~~ time must be completed prior to the ~~issuance-sale~~ of a municipal commercial shellfish licenses in accordance with the Annual Shellfish License Allocation Procedure Plan and Annual Management Plan.

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C. Any license holder convicted of ~~any a~~ violation of this ordinance shall forfeit seniority. Those who have held commercial licenses uninterrupted, from the first year of the Ordinance shall maintain seniority.

Details explaining how licenses will be issued will be described in the Annual Shellfish License Allocation ~~Procedures~~ Plan.

5.5 Limitation of Diggers: The number of commercial licenses may be limited and will be issued according to the Annual Shellfish License Allocation Procedure Plan.

A. If it is determined that Limited Licenses are necessary, the Administrative Community shall issue licenses to residents and nonresidents ~~as allocated from April 1st or the first business day following and then for 90 days, after which licenses shall be sold without regard to residency on a first come first serve basis or lottery as described in the Annual Shellfish License Allocation Procedure Plan.~~

5.6 Open License Sales: When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year;

A. The number of recreational licenses will not be limited. Recreational licenses shall be issued to residents or non residents without restriction.

5.7 License Expiration Date: Each license issued under authority of this ordinance expires June 30th of each year.

5.8 Fee Waivers: Recreational shellfish license fees shall be waived for individuals 65 years or older and ~~12 years or~~ younger than age 13.

6. Opening and Closing of Flats: The Shellfish Conservation Committee in conjunction with the Municipal Joint Board, upon ~~the~~ approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon concurrence of the Department of Marine Resources Area Biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Shellfish Conservation Committee and Municipal Joint Board may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Joint Board and Shellfish Conservation Committee made after the hearing shall be based on findings of fact.

7. Minimum Legal Size of Soft Shell Clams: It is unlawful for any person to possess soft shell clams within ~~the municipality participating municipalities which that~~ are less than two (2) inches in the longest diameter except as provided by Subsection 7.2 of this section.

7.1 Definitions:

A. Lot: The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.

B. Possess: For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.

- 7.2 **Tolerance:** Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.
- 7.3 **Penalty:** Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6681.
8. **Penalty:** A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10).
9. **Effective Date:** This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the member municipalities provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.
10. **Severability:** If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.
11. **Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the member communities and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.
12. **Use of Fees and Fines, Funding:** Fees for shellfish licenses shall be set forth in the Annual Shellfish Management plan and shall accompany the application for the respective license. Fees and fines received shall be used for costs incurred in the enforcement and management of this ordinance.
- 12.1 **Non-lapse Provision:** Monies in the Municipal Shellfish Account shall not lapse at the end of the year but shall be carried over to the next year in that account.
- 12.2 **Funding:** The Municipal Shellfish Program shall be self-supporting, ~~as much as to the extent~~ possible. Funds for operating the Program may be generated by license fees, fines, ~~and~~ financial support from ~~the~~ participating communities, fund-raising events, and charitable contributions.
13. **VIOLATIONS, SUSPENSION OF LICENSES, AND FINES:**
Any person who violates this Ordinance or the policies adopted in the Annual Shellfish Management Plan shall be punished as provided by 12 M.R.S.A. Section 6671 and/or Section 6681. A licensee whose shellfish license has been suspended pursuant to this Ordinance may request return of their license only after the suspension period has expired. A suspended license is not to be returned until the fine is paid in accordance ~~to with~~ the court's decree. The suspension of a commercial license shall begin following conviction. ~~Any A~~ violation of this Ordinance and/or the Management Plan may result in a license suspension. All suspensions of licenses shall be authorized by the Municipal Joint Board. Any licensee whose license has been suspended pursuant to this Ordinance shall be entitled to a hearing before the Municipal Joint Board upon the filing of a written request for a hearing with the Town Clerk of the Administrative Town within thirty (30) days of the effective date of the suspension.
- 13-A. Costs and Attorney's Fees:** In addition to any penalty assessed for any violation of this ordinance, if the municipality is the prevailing party, the municipality shall be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

Classifications of, and penalties for, violations are categorized as follows:

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13.1 Stopping for inspection: A person shall produce their license on demand of any Certified Municipal Shellfish Conservation Warden in uniform and having "probable cause" to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel, or conveyance ~~or of~~ any kind, or any person:

- A. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Conservation Warden.
- B. After the person has stopped, to fail to remain stopped until the said Warden has reached his/~~her~~ immediate vicinity and makes known to the operator the reason for his/~~her~~ request or signal.
- C. To fail or refuse to stand by immediately for inspection on request of said Warden.
- D. To throw or dump into any coastal waters or flats after having been requested or signaled to stop by a Certified Municipal Shellfish Conservation Warden any shellfish, or any pail, bag, hod or container before said Warden has inspected the same.
- E. To attempt to elude, disobey, or assault any Certified Municipal Shellfish Conservation Warden.

Penalties: The first violation of Section 13.1 of this Ordinance shall result in a one (1) month suspension of the license and a three hundred dollar (\$300) fine. The second and subsequent violations of Section 13.1 of this Ordinance shall result in a twelve (12) month suspension of the license and a one thousand dollar (\$1000.00) fine.

13.2 Management Plan: It is unlawful for any person to violate the Annual Shellfish Management Plan.

Penalties: The first violation of the Annual Shellfish Management Plan shall result in a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1500.00). The second and subsequent violations of the Annual Shellfish Management Plan shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$ 1500.00).

13.3 Harvesting Clams in any Closed Area: It is unlawful for any person to harvest clams in a closed area.

Penalties: Any person found guilty of harvesting clams in a closed area shall be subject to a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1500.00). The second and subsequent violations of harvesting clams in a closed area shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$1500.00). The second violation of this section of this Ordinance shall result in a thirty (30) day license suspension and the third and subsequent violations shall result in a one hundred and twenty (120) day suspension of the person's license.

13.4 Minimum Legal Size of Shellfish: It is unlawful for any person to violate minimum shellfish size regulation set forth in this Ordinance:

Penalties: The first violation of Section 7 of this Ordinance shall result in a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1500.00). The second and subsequent violations of Section 7 of this Ordinance shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$1500.00). If a person exceeds a fifty percent (50%) threshold of undersized clams as

described in Section 7.2 at any time, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar (\$1000.00) fine

~~**Penalties:** If a person holding a commercial license uses it to aid and abet the illegal harvest of clams their license shall be suspended for three (3) months and they shall receive a one thousand dollar (\$1000) fine upon conviction. Any second and subsequent convictions under this section of the Ordinance shall result in a twelve (12) months suspension and a one thousand dollar (\$1000) fine. If a person holding a recreational license uses it to harvest clams commercially, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar (\$1000) fine upon conviction.~~

13.5 A ~~regional licensee~~ person licensed under this ordinance who has had their ~~Maine State of Maine Commercial Shellfish License~~ suspended shall forfeit their ~~regional Frenchman Bay Regional Shellfish Conservation Ordinance License (Regional License)~~ for the duration of the State of Maine Commercial Shellfish License suspension. Such a person in possession of _____ shellfish must carry a receipt of purchase for said shellfish.

13.6 **Harvesting without a license:** It is unlawful to harvest shellfish without a license.

Penalties: Any person convicted of harvesting shellfish within any of the participating municipalities without a municipal license issued by authority of the Frenchman Bay Regional Shellfish Conservation Ordinance shall be ineligible to apply for any municipal shellfish license for a period _____ of (3) three years from the date of the conviction, and the first violation of harvesting without a license shall result in a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1500.00). The second and subsequent violations of harvesting without a license shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$ 1500.00).

~~13.7 **Littering:** A person shall not throw, drop, deposit, discard, dump or otherwise dispose of any litter in any manner or amount. Any person doing so shall be in violation of the municipal ordinance.~~

~~13.8 **Trespass:** A person may not access or cross private property or land without permission. A person trespassing having once been warned by property owner, their agent, shellfish warden, or any other law enforcement officer shall be in violation of the municipal ordinance.~~

~~13.9-7~~ **Tagging:** The holder of a commercial shellfish license shall identify shellstock the license holder has taken by means of a harvester tag. The tag shall be in accordance with Maine Department of Marine Resources (DMR) rules. Penalties shall be in accordance with DMR regulation.

~~13.10-8~~ **Suspension:** Any shellfish licensee having three convictions for a violation of this ordinance _____ within a three year period shall have their shellfish license suspended for a period of thirty _____ (30) days.

14. **ENFORCEMENT:** This ordinance shall be enforced by the Certified Municipal Shellfish Conservation Warden or any Municipal Shellfish Conservation Warden appointed by the Municipal Joint Board who, within one year of appointment, must be certified by the Commissioner of the Maine DMR. An enforcement action shall be filed in the name of the municipality where the violation was alleged to have occurred.

15. **AMENDMENTS**

15.1 **Initiation:** A proposal for an amendment to this Ordinance may be initiated by the following:

- A. A written petition submitted with the number of voters in the participating municipalities equal to at least ten percent of the voters in the last gubernatorial election;
- B. A recommendation of the Regional Shellfish Conservation Committee; or
- C. A recommendation of the Municipal Joint Board.

15.2 **Procedure:**

A. Any proposal for an amendment shall be made to the Municipal Joint Board, in writing, stating the specific changes requested. All such proposals shall be transmitted to the Regional Shellfish Conservation Committee for their review and recommendation.

B. Within thirty (30) days of receiving a properly initiated amendment, the Municipal Joint Board shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation within the participating communities at least seven (7) days prior to the hearing. The notice shall contain the time, date and place of the hearing and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary of the changes, together with an indication that a full text is available at the Town Clerk's office shall be adequate notice.

15.3 **Adoption:** This agreement may be amended after proposed changes have been reviewed by the Department of Marine Resources, by a majority vote of the Municipal Joint Board, and approved by the legislative bodies of the parties to the agreement (if they choose). Note: Ellsworth's charter requires Council action.

15.4 **Statute Law Changes:** Any changes to referenced Statute Laws in this Ordinance shall automatically update in this Ordinance upon enactment.

Adoption:

WHEREAS: In consideration of all of the above, and IN WITNESS WHEREOF, the parties have by their duly authorized officers caused this Ordinance to be adopted in all parts this ___ day of ___, 2011.

<u>Municipality</u>	<u>Signature</u>	<u>Title</u>
<u>Sorrento</u>	<u>Harold Page-</u>	<u>Joint Board Member</u>
<u>Sullivan</u>	<u>Gary Edwards-</u>	<u>Joint Board Member</u>

Franklin Shayne Wallace- Joint Board Member

Hancock Peter Johnston- Joint Board Member

Ellsworth Stephen Beatham-Joint Board Member

Lamoine Richard Fennelly, Jr. - Joint Board Member

Trenton Mike Hodgkins- Joint Board Member